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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,247	12/01/2003	Alan C. Colliander	54902-0015	1246
29052	7590	04/26/2005	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/707,247	Applicant(s) COLLIANDER, ALAN C.	
	Examiner Michael P. Ferguson	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9,11-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 11,13 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,12,14,15,20 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Claims 13 and 16-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 10, 2004.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5-9, 12, 14, 15, 20 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Abbott et al. (US 4,950,098).

As to claim 1, Abbott et al. disclose a fence slat **96** comprising:

a longitudinal hollow body (hollow channels defined along length of body);

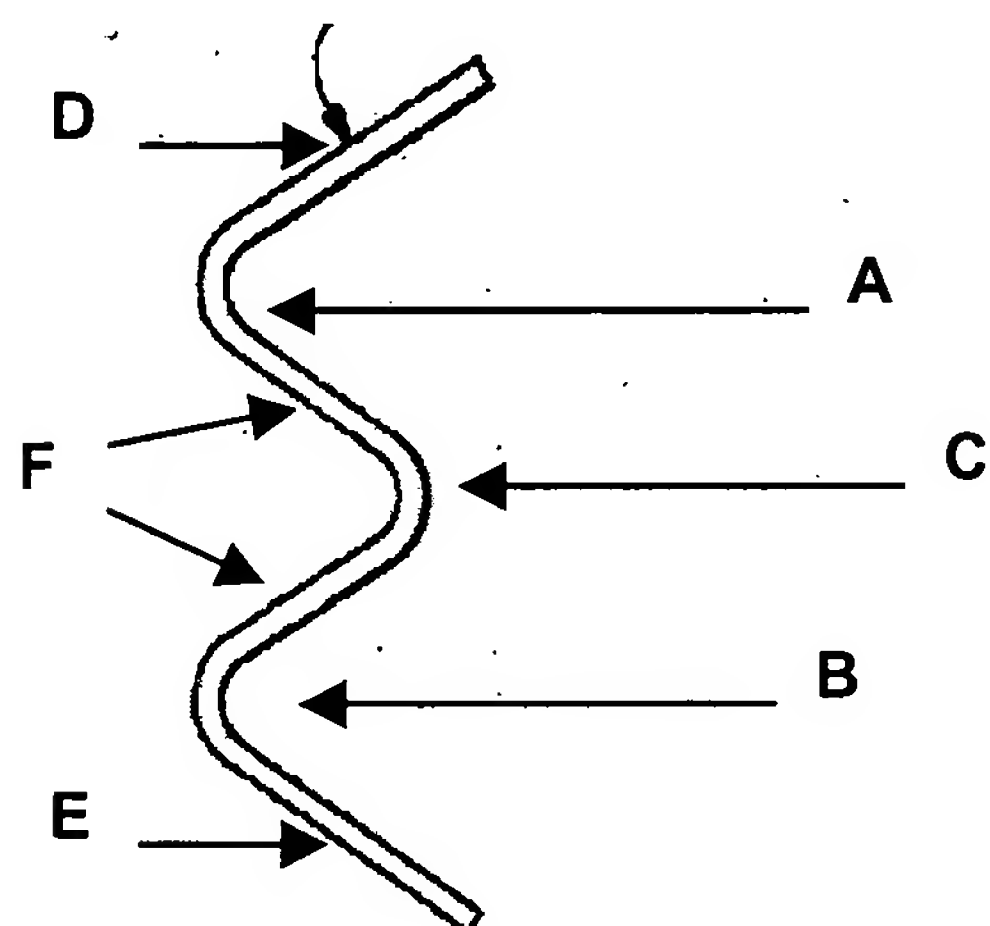
the longitudinal body comprising a first side **A** and a second side **B**;

a first sidewall **A** (Figure 13 reprinted below with annotations) positioned on the first side of the longitudinal body; and

a second sidewall **B** positioned on the second side of the longitudinal body; and

a rib **C** positioned between the first side wall and the second side wall so as to divide (define separate hollow channels along the length of) the longitudinal hollow body;

the first and the second sidewalls and the rib each comprising a harpoon-shaped locking portion **94** (defined by slot **94** disposed on each of the first and second sidewalls **A,B** and the rib **C**) positioned thereon (the harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figures 7-10 and 13).



As to claim 2, Abbott et al. disclose a fence slat **96** wherein the first side wall **A** comprises a first curved sidewall and wherein the second sidewall **B** comprises a second curved sidewall (Figure 13).

As to claim 5, Abbott et al. disclose a fence slat **96** wherein the longitudinal body comprises a tube (tube defined by cylindrical opening **94** when longitudinal body is inserted; Figure 9).

As to claim 6, Abbott et al. disclose a fence slat **96** wherein the tube comprises a substantially flat first side **D** and a substantially flat second side **E** (Figure 13).

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As to claim 7, Abbott et al. disclose a fence slat **96** wherein the tube comprises the rib **C** separating the substantially flat first side **D** and the substantially flat second side **E** (Figure 13).

As to claim 8, Abbott et al. disclose a fence slat **96** wherein the tube comprises a first end and a second end and wherein the first end comprises the locking portion **94** (Figure 9).

As to claim 9, Abbott et al. disclose a fence slat **96** wherein the substantially flat first side **D** comprises a terminating point adjacent to the first end.

As to claim 12, Abbott et al. disclose a fence slat **96** wherein the locking portion **94** comprises a cutout portion **94** and an elevated portion **93** (cutout portion **94** comprising a cutout opening; elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9).

As to claim 14, Abbott et al. disclose a fence slat **96** comprising a second locking portion (not shown; at other end of longitudinal body).

As to claim 15, Abbott et al. disclose a fence slat **96** wherein the first **A** and the second **B** curved sidewalls comprise a curve towards the longitudinal body (Figure 13).

As to claim 20, Abbott et al. disclose a fence slat **96** comprising:
a hollow longitudinal body (hollow channels defined along length of body);
the hollow longitudinal body comprising a first wall **D** and a second wall **E**;
a pair of sidewalls **F** connecting the first wall and the second wall;
a rib **C** connecting the first wall and the second wall of the hollow longitudinal body; and

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the pair of sidewalls and the rib each comprising a harpoon-shaped locking portion **94** (defined by slot **94** disposed on each of the first and second sidewalls **A,B** and the rib **C**; Figure 10) positioned thereon (the harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figures 7-10 and 13).

As to claim 26, Abbott et al. disclose a fence slat **96** for use with a rail, comprising:

a hollow longitudinal body (hollow channels defined along length of body);
the hollow longitudinal body comprising a first wall **D** and a second wall **E**;
a pair of sidewalls **F** connecting the first wall and the second wall;
a rib **C** connecting the first wall and the second wall of the hollow longitudinal body; and

the pair of sidewalls and the rib each comprising a harpoon shaped locking means **94** (defined by slot **94** disposed on each of the first and second sidewalls **A,B** and the rib **C**; Figure 10) for locking the longitudinal body within the rail (the harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figures 7-10 and 13).

Response to Arguments

4. Applicant's arguments filed April 5, 2005 have been fully considered but they are not persuasive.

As to claims 1, 20 and 26, Attorney argues that:

Abbott et al. do not disclose a fence slat comprising a longitudinal *hollow* body; a

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rib positioned between the first side wall and the second side wall so as to divide the longitudinal hollow body; the first and the second sidewalls and the rib each comprising a harpoon-shaped locking portion positioned thereon.

Examiner disagrees. As to claims 1, 20 and 26, Abbott et al. disclose a fence slat **96** comprising a longitudinal hollow body (hollow channels defined along length of body); a rib **C** positioned between the first side wall **A** and the second side wall **B** so as to divide (define separate hollow channels along the length of) the longitudinal hollow body; the first and the second sidewalls and the rib each comprising a harpoon-shaped locking portion **94** (defined by slot **94** disposed on each of the first and second sidewalls **A,B** and the rib **C**) positioned thereon (Figures 7-10 and 13).

Examiner notes that claims 1, 20 and 26 do not claim a fence slat comprising a longitudinal hollow body comprising *enclosed* hollow chambers; *the first sidewall being parallel to the second sidewall*; and a rib positioned between and *parallel to* the first side wall and the second side wall so as to divide the longitudinal hollow body *into two separate enclosed hollow chambers*.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MPF
04/12/05



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600